

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ZORAIDA PEÑA CANAL,

Plaintiff,

v.

MABELLE DE LA ROSA DANN, TERESA
VITTET DE LA ROSA, and DOES 1 to 10,
inclusive,

Defendants.

No. 09-03366 CW

ORDER GRANTING
PLAINTIFF'S
MOTION FOR
DEFAULT JUDGMENT

Plaintiff Zoraida Peña Cenal brings a Motion for Default Judgment seeking entry of default judgment against Defendants Mabelle de la Rosa Dann and Teresa Vittet de la Rosa. Defendants have not filed an opposition to the motion. The motion was set for a hearing on August 26, 2010 but Defendants did not appear. Having considered all of the papers filed by Plaintiff, the Court GRANTS Plaintiff's motion.

BACKGROUND

From July, 2006 to April, 2008, Peña Canal worked for Dann for fifteen hours a day, seven days a week, caring for Dann's three young children and cooking and cleaning for the household. Comp. ¶ 22. Dann's relationship with Peña Canal began in 2002, when Peña Canal was living in Peru and working as a child care provider for

1 Dann's sister, Martha de la Rosa. Id. ¶ 16. Between 2002 and
2 2006, Peña Canal and Dann, who lived in the United States, spoke
3 numerous times about the possibility that Dann would hire Peña
4 Canal to work as a day care provider for Dann's children in the
5 United States. Id. ¶ 17. Dann promised Peña Canal that she would
6 be paid \$600 per month plus free room and board in exchange for
7 working five days per week during regular business hours.

8 Id. ¶ 18. Dann also promised Peña Canal that she would have a
9 private bedroom, bathroom and comfortable living conditions. Id.
10 Peña Canal agreed to come to the United States based on these
11 promises.

12 Unbeknownst to Peña Canal, Dann had no intention of paying
13 Peña Canal for her work. Id. ¶ 21. Dann's promises of
14 compensation and reasonable work accommodations were false. Id.
15 When Peña Canal moved to the United States in June, 2006, she lived
16 with Dann, Dann's three children, and the children's grandmother,
17 Vittet de la Rosa in Vittet de la Rosa's Walnut Creek apartment.
18 Id. ¶ 23. She was immediately put to work as a full-time nanny,
19 maid and cook for the children, Dann and Vittet de la Rosa. Id.

20 In September, 2006, Dann moved her children and Peña Canal to
21 a two-bedroom apartment in Walnut Creek. Id. ¶ 25. One bedroom
22 was for the three children and the other was for Dann. Id. Peña
23 Canal slept in the living room where she had no personal space or
24 privacy. Id. She slept on the living room floor on a folding foam
25 pad. Id.

26 Peña Canal's typical work day began at 6:00 a.m. when she
27 cooked breakfast for the family, and ended around 9:00 p.m. when
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1 she finished washing the dishes for the meals she had cooked for
2 the family. Id. ¶ 26. She spent her days cooking, cleaning,
3 taking care of the children, and sometimes even working for Dann's
4 real estate business. Id.

5 For all of this work, Dann paid Peña Canal only once. On
6 Christmas day in 2006, Dann gave Peña Canal \$100. When Peña Canal
7 asked if the money was wages for her work, Dann told her that it
8 was a gift. Id. ¶ 27. Rather than pay Peña Canal, Dann told her
9 that she owed Dann money and needed to continue to work for free to
10 pay off this debt. Id. At one point, Dann told Peña Canal that
11 she owed Dann over \$13,000. Id.

12 Over the years, Dann repeatedly insulted and berated Peña
13 Canal if her work was not done to Dann's satisfaction. Id. ¶ 30.
14 If Peña Canal responded to these insults in any way, Dann would
15 accuse her of not being sufficiently humble, obedient and grateful.
16 Id.

17 Dann attempted to control every aspect of Peña Canal's life.
18 Dann held her visa, passport and Peruvian identification card. Id.
19 ¶ 31. Whenever Dann left the apartment, she took the passport with
20 her in a briefcase. Id. The few times that Peña Canal questioned
21 her treatment, Dann threatened her with deportation and arrest by
22 telling her that she was illegally in the United States. Id. Peña
23 Canal was afraid that she could be arrested at any time. Id.

24 Dann also restricted Peña Canal's communication and movement.
25 Id. ¶ 32. Dann isolated Peña Canal from individuals that might
26 assist her. Id. Dann prohibited Peña Canal from watching Spanish
27 language television and listening to the radio. Id. ¶ 33. She

1 even destroyed the radio Peña Canal used to listen to Spanish-
2 language news and music. Id. Dann also kept close count of the
3 amount of food Peña Canal ate to ensure that she did not eat more
4 than "the small amount allotted to her each day." Id. ¶ 34.

5 In March, 2008, Dann falsely accused Peña Canal of stealing
6 money from her purse. Id. ¶ 35. She screamed at and physically
7 assaulted Peña Canal. Id. Later in March, Dann insisted that Peña
8 Canal sign a document, which falsely acknowledged that she had been
9 paid for her work during her time with Dann. Id. 36. The
10 following month, with the "help of several good Samaritans," Peña
11 Canal was able to escape Dann's house and report her situation to
12 the authorities. Id. 38.

13 Shortly after Peña Canal escaped, the U.S. Attorney charged
14 Dann with five counts: forced labor, unlawful use of documents in
15 furtherance of servitude, harboring an illegal alien for private
16 financial gain, visa fraud and conspiracy to commit visa fraud. On
17 October 8, 2009, a jury convicted her on all counts. The Court
18 sentenced her to sixty months in prison and three years of
19 supervised release, and ordered her to pay \$123,740.34 in
20 restitution. This restitution amount was based upon the
21 government's calculation, which was derived from data submitted
22 from the federal government's Foreign Labor Certification Program,
23 as evidence of the value of Peña Canal's labor during the period at
24 issue. The award also included \$14,400 in future medical treatment
25 for Peña Canal.

26 The complaint in the present civil case was filed on July 22,
27 2009 and served on Defendants Dann and Vittet de la Rosa on
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1 September 16, 2009. Peña Canal alleges the following claims
2 against both Defendants: (1) violation of the Trafficking Victims
3 Protection Act, 18 U.S.C. § 1589 (Forced Labor) and 18 U.S.C.
4 § 1590 (Trafficking Into Servitude); (2) violation of California
5 Civil Code § 52.5; (3) violation of the Thirteenth Amendment to the
6 United States Constitution; (4) violation of the Fair Labor
7 Standards Act; (5) violations of over twenty provisions of the
8 California Labor Code and relevant Wage Orders issued by the
9 Industrial Welfare Commission of the California Department of Labor
10 Standards Enforcement; (6) intentional infliction of emotional
11 distress; (7) negligent infliction of emotional distress; and
12 (8) violation of Business & Professions Code section 17200 et seq.
13 Peña Canal asserts the following claims against Defendant Dann
14 only: (1) fraudulent misrepresentation; (2) negligent
15 misrepresentation; (3) breach of contract; and (4) breach of the
16 implied covenant of good faith and fair dealing.

17 Neither Defendant has appeared, answered or responded in any
18 way. On May 18, 2010, the clerk of the court entered default
19 against Defendants. Peña Canal now moves for a default judgment.

20 LEGAL STANDARD

21 Pursuant to Rule 55(b)(2) of the Federal Rules of Civil
22 Procedure, the court may enter a default judgment where the clerk,
23 under Rule 55(a), has previously entered the party's default based
24 upon failure to plead or otherwise defend the action. Fed. R. Civ.
25 P. 55(b). A defendant's default, however, does not automatically
26 entitle the plaintiff to a court-ordered default judgment. Draper
27 v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986). The district
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1 court has discretion in its decision to grant or deny relief upon
2 an application for default judgment. Aldabe v. Aldabe, 616 F.2d
3 1089, 1092 (9th Cir. 1980). The court may consider the following
4 factors in deciding whether to enter a default judgment:

5 (1) the possibility of prejudice to the plaintiff, (2) the
6 merits of plaintiff's substantive claim, (3) the sufficiency
7 of the complaint, (4) the sum of money at stake in the
8 action; (5) the possibility of a dispute concerning material
9 facts; (6) whether the default was due to excusable neglect,
10 and (7) the strong policy underlying the Federal Rules of
11 Civil Procedure favoring decisions on the merits.

12 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

13 In considering the sufficiency of the complaint and the merits
14 of the plaintiff's substantive claims, facts alleged in the
15 complaint not relating to damages are deemed to be true upon
16 default. Geddes v. United Fin. Group, 559 F.2d 557, 560 (9th Cir.
17 1977); Fed. R. Civ. P. 8(d). "The district court is not required
18 to make detailed findings of fact." Fair Housing of Marin v.
19 Combs, 285 F.3d 899, 906 (9th Cir. 2002). On the other hand, a
20 defendant is not held to admit facts that are not well-pleaded or
21 to admit conclusions of law. Nishimatsu Constr. Co. v. Houston
22 Nat'l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975). As a result,
23 where the allegations in a complaint are not "well-pleaded,"
24 liability is not established by virtue of the defendant's default
25 and default judgment should not be entered. Id.

26 Damages or other forms of relief awarded are constrained by
27 the rule that judgment by default "must not be different in kind
28 from, or exceed in amount, what is demanded in the [complaint]."
Fed. R. Civ. P. 54(c).

DISCUSSION

I. Eitel Factors

A. Possibility of Prejudice to Plaintiff

To the extent that Defendants Dann and Vittet de la Rosa have failed to appear in and otherwise defend this action, Peña Canal will be left without a remedy if default judgment is not entered in her favor.

B. Excusable Neglect

There is no evidence in the record that Defendants' failure to appear and otherwise defend was the result of excusable neglect. Defendants failed to appear after being served with the complaint in this action, which indicates that their failure to appear was willful. The factor favors entry of default judgment.

C. Substantive Merits and Sufficiency of the Complaint

After thoroughly reviewing Peña Canal's complaint, the Court finds that the well-pleaded allegations state claims for which relief can be granted. Accepting the factual allegations of the complaint as true, Peña Canal has demonstrated that Defendants violated all of the federal and state statutes and the state common law claims alleged therein.

D. Other Eitel Factors

Although there is a large sum of money at stake in the action and the strong policy underlying the Federal Rules of Civil Procedure favors a decision on the merits, on balance, the Eitel factors weigh in favor of granting default judgment.

II. Damages

Having determined that Peña Canal is entitled to entry of

1 default judgment on her claims, the Court must determine the amount
2 of damages to which she is entitled. Peña Canal is entitled to an
3 award of compensatory damages, consisting of both the value of her
4 wages and additional damages attributable to the tortious conduct
5 she endured. Peña Canal has submitted persuasive evidence that a
6 fair hourly wage for her work was \$23.70. Shenker Decl. ¶¶ 7-10;
7 Avila Decl., Ex. B. Assuming this hourly wage, and including
8 applicable penalties under the California Labor Code, Dann owes
9 Peña Canal \$340,746.75. Because Peña Canal worked for Vittet de la
10 Rosa from July to mid-September of 2006, Vittet de la Rosa is
11 jointly and severally liable for the wages during that time period,
12 \$22,858.65. See Avila Decl, Ex. B. The Court also awards \$92,400
13 in compensatory damages for the emotional distress and other tort
14 damages caused by Dann. Fukushima Decl. ¶¶ 7-11. There is little
15 doubt that Dann's conduct will have lasting emotional and mental
16 health effects on Peña Canal.¹

17 Peña Canal is also entitled to punitive damages under several
18 of her state and federal causes of action. See e.g., Cal. Civ.
19 Code §§ 52.5(b) and 3294(a); U.S. Const. amend. XIII; 18 U.S.C.
20 § 1595. Here, Dann acted with a conscious disregard for Peña
21 Canal's right to be free from involuntary servitude and she
22 intentionally misrepresented facts for the purpose of depriving her
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24 ¹Peña Canal seeks \$340,746.75 in restitution. However,
25 awarding \$340,746.75 in restitution in addition to \$433,146.75 in
26 compensatory damages (\$340,746.75 in wages plus \$92,400 for
27 emotional distress) would constitute a double award. Further,
because the Court required Dann to pay \$123,740.34 in restitution
to Peña Canal as part of her criminal sentence, the compensatory
damages award against Dann may be offset by this amount.

1 of this right. The Court concludes that a punitive damages award
2 in an amount equal to her compensatory damages is justified in
3 light of Dann's disregard of Peña Canal's basic rights.

4 Plaintiffs' attorneys are also entitled to an award of
5 reasonable fees. See 18 U.S.C. § 1595; Cal. Civ. Code § 52.5(f);
6 Cal. Labor Code §§ 1194, 1197, 218.5, 218.6. The Court will
7 determine a reasonable amount of fees once Plaintiff submits such
8 supporting evidence.

9 CONCLUSION

10 For the foregoing reasons, the Court grants Peña Canal's
11 motion for default judgment against Defendants Mabelle de la Rosa
12 Dann and Teresa Vittet de la Rosa. The Court awards Peña Canal
13 \$618,812.82 in damages.

14 IT IS SO ORDERED.

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16 Dated: 09/02/10



17 CLAUDIA WILKEN
18 United States District Judge
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